IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3148 OF 2003
IN
FIRST APPEAL NO.1361 OF 2003

The Oriental Insurance Co. Ltd. ...Applicant

Versus

Shri Bharat Arjun Kindre & Ors. ...Respondents

Shri S.R.Singh for the Applicant.

CORAM : A. S. OKA, J.

DATE : JANUARY 31, 2007.

P.C.:

1. Heard Advocate appearing for the Applicant. The entire amount due and payable of Rs.81,297/- as per the impugned judgment and award has been deposited with the Tribunal. The case of the Applicant is that the Tribunal ought to have exonarated the Applicant on account of breach of terms and conditions of the policy on the part of the insured. However, the Tribunal has not accepted the case made out by the Applicant.

2. Even if the Applicant succeeds in the Appeal, the award against insured will remain and therefore, original claimant cannot be deprived of the compensation amount.

3. Hence, Application is disposed of by passing following order:

(i) The original claimant is permitted to withdraw the amount deposited by the Applicant subject to giving an undertaking before the Tribunal to bring back the amount with appropriate rate of interest in case the Applicant succeeds in Appeal.

(ii) As the entire amount due and payable as per the award has been deposited with the Tribunal, the Applicant is permitted to withdraw the amount deposited in this court under section 173 of the Motor Vehicles Act, 1988 together with interest accrued thereon.

JUDGE